MINUTES
of the
SEVENTH MEETING IN 2012
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE

December 10-11, 2012
Room 322, State Capitol
Santa Fe

The seventh meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for 2012 was called to order by Representative Jim R. Trujillo, temporarily acting as chair, on Monday, December 10, 2012, at 9:30 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Rep. Edward C. Sandoval, Chair (12/11)
Sen. Tim Eichenberg, Vice Chair
Rep. Donald E. Bratton
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Timothy M. Keller
Rep. Rodolpho "Rudy" S. Martinez
Sen. John Arthur Smith
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Sen. Pat Woods
Rep. Bob Wooley

Absent
Sen. Mark L. Boitano
Sen. Timothy Z. Jennings, Senate President Pro Tempore
Sen. Gay G. Kernan
Rep. Ben Lujan, Speaker of the House
Sen. Howie C. Morales
Rep. Henry Kiki Saavedra

Designees
Rep. Ray Begaye (attending as a guest 12/10)
Sen. William F. Burt
Rep. Ernest H. Chavez
Rep. Thomas A. Garcia (attending as a guest 12/10)
Rep. Roberto "Bobby" J. Gonzales
Sen. Phil A. Griego (attending as a guest)
Rep. Sandra D. Jeff (attending as a guest 12/10)
Sen. George K. Munoz (12/11)
Rep. Debbie A. Rodella (attending as a guest 12/10)
Sen. William E. Sharer

Sen. Rod Adair
Rep. Zachary J. Cook
Rep. Brian F. Egolf, Jr.
Rep. Miguel P. Garcia
Sen. Eric G. Griego
Rep. Antonio Lujan
Rep. Antonio "Moe" Maestas
Sen. Steven P. Neville
Sen. Nancy Rodriguez
Sen. Bernadette M. Sanchez
Sen. John M. Sapien
Rep. James R.J. Strickler
Rep. Don L. Tripp

Rep. Luciano "Lucky" Varela
Sen. Peter Wirth

(Attendance dates are noted for those members not present for the entire meting.)

Guest Legislator
Sen. Sander Rue

Staff
Pam Ray, Staff Attorney, Legislative Council Service (LCS)
Ric Gaudet, LCS
Damian Lara, Staff Attorney, LCS
Pam Stokes, Staff Attorney, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Monday, December 10

Revenue Forecast
Leila Burrows, chief economist, Department of Finance and Administration (DFA), John Tysseling, chief economist, Taxation and Revenue Department (TRD), and Elisa Walker-Moran, chief economist, Legislative Finance Committee (LFC), presented the December 2012 revenue estimate for the state to the committee. The Consensus Revenue Estimating Group, consisting of career economists at the DFA, TRD, LFC and Department of Transportation, developed the estimate. Since the August 2012 revenue estimate, fiscal year (FY) 2012 revenue has increased $56 million; FY 2013 revenue has been estimated to increase by $20 million; and FY 2014 revenue is expected to increase by $10 million. FY 2014 new revenue, which is defined as FY 2014 recurring revenue less FY 2013 recurring appropriations, is expected to be $283 million. New senior severance tax bond capacity is forecast to be $222 million.

Gross receipts tax (GRT) revenue increased in FY 2012, fueled mainly by increases in the extractive industries and growth in the manufacturing sector. The retail trade and construction sectors, however, continued to perform weakly. Personal income tax (PIT) revenue increased in FY 2012, possibly due to oil and gas withholding provisions recently enacted. PIT growth is expected to be slow in FY 2013. Corporate income tax (CIT) revenues also continue to be sluggish, due to the high level of net-operating loss carryforwards that many corporations are still claiming. Worries about resolution at the federal level of budget negotiations and the possible "fiscal cliff" at the end of 2012 have made economic forecasts difficult. Resolution of these issues will still likely require a long, slow climb to a robust economy, but failure to resolve them could create very difficult economic conditions.

Questions and comments from committee members included the following.

- What is the TRD doing to assist small businesses when they have difficulty paying their taxes on time? Mr. Tysseling said that the TRD cannot waive tax liability for any business.

- Could the large increase in GRT revenue, coupled with anemic growth in CIT revenue, be attributed to the fact that most companies doing business in New Mexico operate as pass-through entities, rather than as corporations? Mr. Tysseling said that interpretation has some merit.

- Has the TRD issued guidelines on how manufacturers will be able to claim the GRT deduction on items consumed during the manufacturing process? Mr. Tysseling said that draft guidelines were released the previous week, and the deduction forms are still being developed. He said that the department is considering introducing legislation to clarify the definitions of "manufacturer" and "consumable", but no decision has been made yet.

- If the legislature extends the locomotive fuel tax deduction to all railroads in the state, what would the fiscal impact be? Mr. Tysseling said that the total fiscal impact would be about $5 million. The current deduction granted to Union Pacific is expected to cost $1.4 million annually.

- TRD staff was requested to research the amount of exports from the state that are subject to the GRT.

- What will happen if the "fiscal cliff" revenue cuts and tax increases happen at the end of the year? Mr. Tysseling said that there would be an immediate impact on salaries, which would in turn impact PIT and GRT revenue.

Northern New Mexico College Legislative Proposals

Ricky Serna, vice president for advancement, Northern New Mexico College (NNMC), and Domingo Sanchez, vice president for finance and administration, NNMC, discussed with the committee ideas the college administration has to raise revenue in order to construct dormitories. Northern New Mexico State School was established as a normal school for teachers in the late 1800s. It is a constitutionally created college that has performed the role of a technical-vocational institute and a community college. NNMC is now a four-year baccalaureate-granting school with student enrollment of approximately 2,000 students. Eighty percent of its students come from within a 35-mile radius of the campus. Currently, there is no housing on campus, and the school is limited in its ability to raise money to build such a facility.

College administrators originally developed an idea to provide a local option GRT increment to support capital infrastructure at the college, but subsequently backed off that idea because the tax rate in Rio Arriba County would be too high. Now, it is investigating some sort of public-private partnership, similar to Lobo Village at the University of New Mexico. Another idea would be to enact a law that would allow the college to impose a property tax mill levy. Currently, only community colleges can impose mill levies. It is unclear whether NNMC would need a constitutional amendment to enable it to participate in a mill levy.

Questions and comments from committee members included the following.

- How much will a new dormitory cost to construct? Mr. Serna said that it will cost between $12 million and $14 million.

- What is the status of the salary parity issue at the college? Mr. Serna said that faculty salaries at NNMC are at least $6,000 less than at similar institutions. A $600,000 appropriation for faculty salaries was previously vetoed, with the reason that the college had been in the middle of cleaning up its accounting methods and records. A new appropriation request is being presented to the legislature, which would be allocated exclusively toward increasing faculty salaries.

- NNMC has lower salaries, but it also has the lowest tuition rate in the region. All universities in the state are clamoring for salary parity.

- Why is the graduation rate of 18 percent at NNMC so low? Mr. Serna said that much of NNMC's educational services are remedial in nature. Eighty-two percent of the college's students take at least one remedial course.

- Is the college still under a fiscal watch by the Higher Education Department (HED)? Mr. Sanchez said that the college had been required to report to the HED on a monthly basis, but it is now reporting quarterly. The college will probably be removed from the fiscal watch in 2013.

- The HED's funding formula will financially hurt smaller universities.

- LCS staff was directed to investigate whether NNMC would need constitutional language changes in order for it to seek a property tax levy.

Senate Memorial 52 — Graduated Gaming Tax for Racetracks

Frank Baca, general counsel and acting executive director, and Jeff Landers, chair, Gaming Control Board (GCB), discussed with the committee the results of the GCB's study of the possibility of establishing in statute a graduated gaming tax for casinos operating at racetracks, also known as racinos. The horse racing industry in the state is estimated to have an annual economic impact of more than $500 million. Casinos located at horse racetracks have become an integral component of the health of the horse racing industry, and the two industries are inseparable in New Mexico. Some smaller racinos have been struggling to compete with larger racinos, and with tribal casinos that pay a much lower percentage of their net win to the state. In addition, casino operations in Arizona, Colorado and Oklahoma have recently expanded, and it is just a matter of time before gaming operations will be allowed in Texas. A realization inside the industry has taken hold that there is a need to protect the New Mexico gaming industry, instead of continuing battles between small and large racinos and between racinos and tribal casinos.

Senate Memorial 52 of the 2012 legislative session tasked the GCB with studying whether a graduated gaming tax, with smaller racinos paying the gaming tax at a lower rate, would be feasible. After several months and many meetings with all of New Mexico's racinos, the group decided that it will not propose legislation establishing a graduated gaming tax. However, the GCB decided that it will investigate changing some rules in order to reduce the regulatory burden on racinos. In addition, racinos recommended lowering the excise tax on the purchase of new gaming machines, which would have the effect of allowing racinos to purchase some of the newest and most-popular gaming machines. This change could help racinos compete within the larger regional gaming industry. Mr. Baca said that the GCB's core mission is to protect the integrity of the gaming industry, yet it also needs to not regulate the industry out of existence. Mr. Landers said that another idea the racinos may pursue is to offer a credit against gaming tax liability in proportion to the number of live race days held at racinos. This change would benefit the casino side of the operation, while helping the horse racing industry simultaneously.

Questions and comments from committee members included the following.

- Would an increase in the number of gaming machines allowed at a racino help the industry? Mr. Landers said that it would, but the 2007 gaming compacts with tribes operating casinos would need to be renegotiated in order for that change to be possible.

- The horse racing industry has become an unwanted stepchild of the gaming industry.

- Has the GCB met with tribal casinos about their perspective on statutory changes to gaming statutes? Mr. Landers said that the GCB has not had any meetings with tribal casinos relating to Senate Memorial 52.

- The state needs to crack down on the many illegal horse racing venues operating across the state. Those operations are generating millions of dollars, with no revenue going to the state. At the same time, the state is trying to extract more revenue from tribal casinos over the issue of how net win is calculated. Mr. Landers said that the State Racing Commission currently has very little authority to sanction those operations. Legislation is being proposed that would give the commission more authority to close those facilities.

- Any change in tax laws to benefit smaller racinos should include a local government contribution.

Permanent Funds Annual Update

Steven Moise, state investment officer, Vince Smith, deputy state investment officer, and Brent Shipp, chief financial officer, State Investment Council (SIC), presented an update to the committee on the status and performance of investment of the state's permanent funds. The balance of the assets invested by the SIC on the day of the committee meeting was $16.058 billion. More than $700 million has been distributed from the permanent funds in the past 12 months to various beneficiaries. The SIC continues to restructure its investment portfolio from a reliance on public equities to a more balanced strategy to include more income-producing investments. The SIC has one more year before it will achieve the investment targets it set.

The SIC is actively pursuing litigation to recover assets lost during the recent financial market collapse. Mr. Moise said that the SIC should be able to announce significant recovery of assets within the next few months. The SIC completed its FY 2012 audit and had no significant findings associated with the audit.

The Land Grant Permanent Fund has a balance of $11.2 billion, with a strong 18 percent growth in the past 12 months. The fund ranks near the top worldwide for one-year growth, but it is still in the third quartile over a three-year period. The Severance Tax Permanent Fund (STPF) grew to $3.96 billion, returning 16 percent in the past year. Growth of the STPF has been reduced in recent years because there have been no significant contributions to the fund in several years. Mr. Moise said that trust funds need regular contributions in order for them to have sustained growth.

Questions and comments from committee members included the following.

- What are typical contract terms between the SIC and an investment manager? Mr. Smith said that it takes four to seven months for the SIC to choose a manager with which to begin negotiations. Payment is usually a flat rate, based on the asset value being managed. All contracts have a 30-day termination clause, for any reason that the SIC chooses.

- Does the SIC still advocate legislation exempting employees of the SIC from provisions of the Personnel Act? Mr. Moise said that the SIC is currently revising its proposed legislation to exempt its employees from some of that act's provisions. In order to exercise the SIC's fiduciary responsibility to the LGPF beneficiaries, it needs more budget autonomy, especially the ability to pay top-quality employees market-rate salaries.

- Mr. Moise was asked to explain what he meant by describing "years of mismanagement" in referring to previous SIC management. Mr. Moise said that the SIC used to have a policy that it would not pay more than 25 basis points to investment managers. That foolish policy had the effect that the SIC could only contract with sub-par managers, whose performance resulted in low investment yields.

Chile Equipment Tax Credit

Charles Marquez, lobbyist, New Mexico Chile Association, presented proposed legislation to the committee that would grant compensating tax and GRT deductions for the purchase and installation of certain chile production and processing equipment. The intent of the legislation is to encourage the purchase of agricultural equipment to enable greater production and processing of chile in the state. Mr. Marquez said that recent technological developments will soon allow for mechanical harvesting of green chile plants, which will greatly increase the amount of chile planted in the state.

Proposed Legislation — Reporting of Tax Expenditures

Senator Keller presented proposed legislation for the committee's consideration that would require the Consensus Revenue Estimating Group to compile a tax expenditure budget and a dedicated revenue budget of major tax expenditures. In order to reduce the administrative burden placed on executive and legislative agencies to produce the reports, each major tax expenditure would be reviewed every five years, rather than every year, as previously vetoed legislation would have required.

State Land Office Annual Status and Revenue Update

Ray Powell, commissioner of public lands, discussed with the committee activities on and revenues generated from state trust lands administered by the State Land Office (SLO). The SLO had another record-breaking revenue year in FY 2012, bringing in $652 million, most of which came from oil and gas lease payments, royalties and bonuses. FY 2013 revenue is expected to drop somewhat but increase again in FY 2014. Construction began on a new ethanol and biodiesel facility on state trust land in Hobbs, which will provide revenue for trust beneficiaries as well as provide economic development and jobs for the area. The office also entered into agreements with the U.S. Fish and Wildlife Service to protect lesser prairie chickens and dune sagebrush lizards, while still allowing agricultural production to occur.

Commissioner Powell said that future revenue growth on state trust lands will come from renewable energy and commercial projects. The state is expected to earn $239 million over the next 30 years just from current projects and new applications for projects. If planned correctly, renewable energy could replace oil and gas revenue when fossil fuel supplies eventually dwindle. Commercial projects that use state trust lands are also a tremendous boon to the economy and the trust beneficiaries. Rather than investing in companies to build production facilities overseas, the SIC should consider investing in companies to build those facilities on state trust land, increasing the state's economic activity. If an investment does not succeed, the SLO would still retain ownership of the capital asset, which could then be leased to another entity.

Questions and comments from committee members included the following.

- Does the SLO work with the New Mexico Renewable Energy Transmission Authority (RETA) in planning renewable energy projects? Harry Relkin, general counsel, SLO, said that SLO staff works very closely with the RETA about possible projects.

- State agencies need to be cognizant of the U.S. Department of Defense's requirements when considering the placement of electricity transmission lines.

- Why will the SLO be charging counties for the use of county roads on SLO rights of way? Mr. Relkin said that this issue has been problematic for decades. A recent U.S. Supreme Court decision mandated the SLO (and other land trust agencies) to receive consideration for all activities done on state trust land. Rather than negotiate and possibly litigate with county governments over the lease of every county road that uses SLO right of way, the office decided another approach was needed. With the cooperation of the New Mexico Association of Counties, the SLO developed a system in which counties will be granted a permanent easement for their roads across state trust lands, and counties would start paying a modest fee for the use of those easements. The SLO is currently discussing those fees with each county, in the hopes that a settlement can be made soon.

- How would a new governmental easement across state trust land be determined? Mr. Relkin said that the SLO legal team would research that issue and report back to the committee.

- How is property tax assessed against business assets located on state trust land? Mr. Relkin said that the land on which property is located is not generally subject to property taxation, and the assets on the land tend to be taxed as belonging to the business that uses the property. However, leases that are for more than 75 years can be treated as if owned by the lessee.

The minutes of the October 29-30 and November 21 meetings of the committee were adopted without changes.

The committee recessed at 4:22 p.m.

<u>Tuesday, December 11</u>

The committee was reconvened on Tuesday, December 11, at 9:39 a.m. by Representative Sandoval.

Corrective Action Fund Overview

Jeff Canney, program evaluator, LFC, reviewed for the committee the programs associated with the Corrective Action Fund administered by the Department of Environment (NMED). The fund was established to prevent and remediate spills from underground storage tanks (USTs) holding gasoline and special fuel. A petroleum products loading fee, currently set at $110 per 8,000 gallon tanker load, is imposed on distributors to pay for the program. The NMED's Petroleum Storage Tank Bureau administers the UST program, performing inspections and remediation programs.

The LFC program evaluation determined that 66 percent of USTs were in compliance with NMED regulations, which is a lower rate than the national average of 71 percent. The state will need to spend $263 million over the next 20 years to eliminate the 739 contaminated sites in the state. The current remediation process does not follow the U.S. Environmental Protection Agency's recommendations for expedited site assessments and pay-for-performance contracts. Finally, the evaluator determined that the NMED uses 70 percent of the fund balances to pay for the UST program, using the remaining portion for other departmental functions. This percentage of revenues is less than the percentage of the other states.

Questions and comments from committee members included the following.

- The Corrective Action Fund was never intended to be used for above-ground storage tanks, just USTs. During the Richardson Administration, the legislature would take away funding for the NMED for various programs for political reasons. The NMED would then allocate a portion of the fund to replace the lost funding, resulting in less revenue for the UST remediation program.

Endorsement of Legislative Proposals

The committee reviewed for endorsement the following bill drafts, most of which had been heard by the committee in prior testimony.

1. <u>CIT Single Sales Factor/Combined Reporting/Repeal Credits</u>. NOT ENDORSED.

2. <u>Economic Development Department (EDD) CIT Single Sales Factor</u>. NOT ENDORSED.

3. <u>CIT Rate Reduced to 6.4%/Combined Reporting/Repeal Credits</u>. NOT ENDORSED.

4. <u>EDD CIT Rates Reduced to 4.9%</u>. NOT ENDORSED.

5. <u>EDD High-Wage Jobs Tax Credit Changes</u>. ENDORSED, Senator Phil A. Griego to sponsor.

6. <u>High-Wage Jobs Tax Credit Amendments</u>. ENDORSED, Representative Martinez to sponsor.

7. <u>TRD Independent Hearing Officers</u>. NOT ENDORSED.

8. Reduce GRT Rates/Phase Out Health Care Deductions. ENDORSED, Representative Trujillo to sponsor.

9. State Graduate Employment Tax Credit. ENDORSED, Senator Keller to sponsor.

10. Technology Transfer GRT Deduction. ENDORSED, Senator Keller and Representative Gonzales to co-sponsor.

11. Technology Commercialization Endowment Fund GRT Credit. ENDORSED, Senator Keller to sponsor.

12. This proposal was removed from consideration.

13. This proposal was removed from consideration.

14. Plug-in Electric Vehicles Motor Vehicle Excise Tax Exemption. ENDORSED, Senator Phil A. Griego and Representative Trujillo to co-sponsor.

15. Regional Transit District Tax Distribution Change. ENDORSED, Senator Cisneros and Representative Trujillo to co-sponsor.

16. Microbrewery Production Limit Increase. ENDORSED, Senator Sue Wilson Beffort to sponsor.

17. Small Winery Production Limit Increase. ENDORSED, Senator Smith and Representative Dona G. Irwin to co-sponsor.

18. Disclosure of All Real Property Sales Affidavits. ENDORSED, Senator Munoz to sponsor.

19. Annual Delinquent Property Sales in Each County. ENDORSED, Representative Martinez to sponsor.

20. Property Tax Valuation Limitation. NOT ENDORSED.

21. Durable Medical Equipment GRT Deduction. ENDORSED, Representative Trujillo to sponsor.

22. Transferable Income Tax Credits. NOT ENDORSED.

23. Manufacturing Consumables Special Agreements to Pay GRT. NOT ENDORSED.

24. Dialysis GRT Deduction. ENDORSED, Senator Cisneros to sponsor.

25. Chile Production GRT Credit. ENDORSED, Senator Munoz to sponsor.

26. Reporting of Tax Expenditures. ENDORSED, Senator Keller and Representative Varela to co-sponsor.

Representative Sandoval thanked the more than two decades of service provided by Ms. Ray, who will be retiring at the end of 2012. The committee and audience gave her a standing ovation, and a bouquet of flowers was presented to the long-suffering staff attorney of the committee, to usher her along in the next stage of her life odyssey.

There being no further business, the committee adjourned at 11:40 a.m.